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17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 SAMARA GREEN, CHARLES  
20 JOHNSON and BRETT JACOB, *on*  
21 *behalf of themselves and all others*  
22 *similarly situated,*

23 Plaintiffs,

24 v.

25 WELLS FARGO & COMPANY and  
26 WELLS FARGO BANK, N.A.,

27 Defendants.

Case No. 3:20-cv-05296-JCS

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

1. O.C.G.A. §§ 10-1-390, *et seq.*
2. N.Y. Gen. Bus. Law § 340, *et seq.*
3. Cal. Civ. Code § 1785, *et seq.*
4. Cal. Civ. Code § 1788, *et seq.*
5. Unjust Enrichment

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Brett Jacob, Samara Green and Charles Johnson (collectively,  
2 “Plaintiffs”), individually and on behalf of the proposed Classes defined herein, bring  
3 this class action lawsuit for damages and injunctive relief resulting from the unlawful  
4 and deceitful actions of Defendants Wells Fargo & Company and Wells Fargo Bank,  
5 N.A. (collectively, “Wells Fargo” or the “Defendants”), as described herein.

## 6 **INTRODUCTION**

7 1. Wells Fargo is, among other things, a mortgage servicing company  
8 operating throughout the United States.

9 2. As part of its mortgage servicing operations, Wells Fargo collects the  
10 monthly mortgage payments of borrowers (like Plaintiffs and the putative class  
11 members), and those funds are, in turn, applied to principal and interest, taxes and  
12 insurance as well as any other fees and charges that may have been assessed.

13 3. Wells Fargo earns revenue from mortgage loan servicing in several  
14 ways. For instance, Wells Fargo earns a per-loan servicing fee established by its  
15 servicing agreements with the owners of the loans that are entitled to payment of the  
16 principal and interest payments set forth in the mortgage loan instruments.

17 4. Wells Fargo also earns “float” income on unapplied funds, which  
18 accrues for the time between when consumers pay and when funds are remitted to  
19 the loans’ owners.

20 5. Additionally, Wells Fargo (as the loan servicer) retains all or part of  
21 certain fees it collects from borrowers, such as late charges, and for loans owned by  
22 various government sponsored enterprises (“GSEs”), like Ginnie Mae, Fannie Mae,  
23 and Freddie Mac, Wells Fargo earns fees for, among other things, filing incentive  
24 payments after loans are placed in forbearance.

25 6. Following the worldwide outbreak of COVID-19, Congress passed  
26 the Coronavirus Aid, Relief and Economic Security (“CARES”) Act in order to,  
27 among many other things, provide some relief to millions of American homeowners  
28 struggling to make their mortgage payments as a result of the economic difficulties

1 caused by the pandemic.

2 7. The CARES Act instructed mortgagees and servicers to create  
3 mortgage forbearance provisions for all federally-backed mortgages, which includes  
4 loans serviced by Defendants on behalf of GSEs that acquire, securitize and insure  
5 repayment of the majority of consumer mortgage loans in America.

6 8. The CARES Act makes it abundantly clear that participation in a  
7 COVID-19 mortgage forbearance program is entirely voluntary; that is, a mortgagor  
8 must be informed of the various terms and conditions of the program and then make  
9 a conscious decision to enter the program.

10 9. According to the Consumer Financial Protection Bureau (“CFPB”),  
11 before a bank servicing a loan can grant forbearance, it is supposed to request and to  
12 receive an attestation of a COVID-19-related financial hardship from the borrower:

13 REQUIREMENTS FOR SERVICERS.— (1) IN  
14 GENERAL.—*Upon receiving a request for*  
15 *forbearance from a borrower under subsection (b), the*  
16 *servicer shall with no additional documentation*  
17 *required other than the borrower’s attestation to a*  
18 *financial hardship caused by the COVID–19*  
19 *emergency* and with no fees, penalties, or interest  
20 (beyond the amounts scheduled or calculated as if the  
21 borrower made all contractual payments on time and in  
22 full under the terms of the mortgage contract) charged to  
23 the borrower in connection with the forbearance,  
24 provide the forbearance for up to 180 days, which may  
25 be extended for an additional period of up to 180 days at  
26 the request of the borrower, provided that, the  
27 borrower’s request for an extension is made during the  
28 covered period, and, at the borrower’s request, either the  
initial or extended period of forbearance may be  
shortened.<sup>1</sup>

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1 <sup>1</sup> <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf> (last visited  
August 14, 2020) (emphasis added).

1        10. As detailed herein, Wells Fargo unilaterally and without consent, and  
2 certainly without requesting or receiving any financial hardship attestation, opted  
3 unwitting clients into its COVID-19 mortgage forbearance program.

4        11. In addition, Wells Fargo put through secondary requests for  
5 forbearance on behalf of homeowners who had asked to participate in the program  
6 initially but who did not ask for extensions and no longer wanted to be in the  
7 forbearance program.

8        12. Since the beginning of the COVID-19 pandemic, approximately 5.5  
9 million homeowners have participated in a mortgage forbearance program, either  
10 knowingly or unknowingly. Upon information and belief, Wells Fargo has deferred  
11 approximately 2.5 million payments and it is not clear whether Wells Fargo obtained  
12 the requisite financial attestation or consent for any of those “participants.”<sup>2</sup>

13        13. The requirement of a volitional act on the part of mortgagor  
14 participants is intentional as mortgage forbearance has serious consequences for  
15 homeowners, including an inability to obtain additional credit and/or to refinance  
16 any existing loans.

17        14. As a result, those homeowners, including Plaintiffs, suffered  
18 damages, including, but not limited to, an inability to access credit, to refinance to  
19 lower interest rates (and away from particular mortgage servicers like Wells Fargo),  
20 and in dealing with the difficult situation of removing their mortgages from a  
21 program they did not want.

22        15. Defendants benefit by unilaterally opting unwitting homeowners into  
23 its forbearance program in a number of ways, including retaining borrowers who  
24 might otherwise refinance their mortgages with other institutions.

25        16. Interest rates are at all-time lows and many homeowners are seeking  
26 \_\_\_\_\_

27 <sup>2</sup> See, e.g., [https://www.nbcnews.com/business/personal-finance/more-wells-](https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610)  
28 [fargo-customers-say-bank-decided-pause-their-mortgage-n1234610](https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610) (last visited  
August 14, 2020).

1 to take advantage of these historically low rates by refinancing; if an account is  
2 placed into a forbearance program, those borrowers cannot typically refinance for  
3 many months, if not years, even after bringing the account current.

4 17. The fact that homeowners were involuntarily enrolled in Wells  
5 Fargo's COVID-19 forbearance program and therefore cannot refinance their  
6 mortgages (and potentially away from Wells Fargo to another lender or servicer) for  
7 months and months after getting their account out of forbearance is a serious  
8 problem.

9 18. According to recent articles published on Forbes' website entitled  
10 *Covid-19 is About to Make Refinancing a Home a Lot More Expensive and Your*  
11 *Mortgage Refinance Could Cost Thousands More Thanks to New Fee*, starting  
12 September 1, 2020, the cost of refinancing a mortgage is increasing as a result of  
13 economic risks associated with Covid-19.<sup>3</sup>

14 19. Specifically, both Freddie Mac and Fannie Mae have recently  
15 announced a new mortgage refinancing fee of 0.5%. This refinancing fee will cost  
16 refinancing homeowners \$500 for every \$100,000 refinanced.<sup>4</sup>

17 20. Defendants' actions are, unfortunately, yet another example of Wells  
18 Fargo opportunistic and illegal actions that seem to only benefit it financially  
19 without any regard for the needs of its customers *even in the throes of a catastrophic*  
20 *pandemic*.

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24 <sup>3</sup> <https://www.forbes.com/sites/advisor/2020/08/13/your-mortgage-refinance-could-costs-thousands-more-thanks-to-new-fee/#f1c2c0c6ef7d> (last visited August  
25 16, 2020).

26 <sup>4</sup> <https://www.forbes.com/sites/robertberger/2020/08/15/covid-19-is-about-to-make-refinancing-a-home-a-lot-more-expensive/#3e36002a49a1> (last visited August  
27 16, 2020) (stating that "[t]he fee will cost the average consumer \$1,400 in additional  
28 fees").

1           21.       Defendants recently agreed to pay \$3 Billion to resolve their potential  
2 criminal and civil liability stemming from their practice of pressuring employees to  
3 meet unrealistic sales goal that led thousands of employees to provide millions of  
4 accounts or products to customers under false pretenses or without consent, often by  
5 creating false records or misusing customers' identities.<sup>5</sup>

6           22.       The recent revelations regarding Defendants' practice of involuntary  
7 and without proper documentation putting homeowners' in unwanted forbearance  
8 program prompted the following statement from Senator Sherrod Brown of Ohio,  
9 the ranking Democrat on the Banking Committee:

10                   Once again it seems that Wells Fargo's sloppy service  
11                   and shoddy management are hurting consumers. Wells  
12                   Fargo should immediately address each of these  
13                   complaints and make changes to ensure that no borrower  
14                   finds themselves worse off from actions that their  
                    servicer takes without their consent or notice.<sup>6</sup>

15           23.       In addition to Senator Brown's public statement, Senators Elizabeth  
16 Warren of Massachusetts and Brian Schatz of Hawaii recently wrote a letter to the  
17 Chief Executive Officer of Wells Fargo seeking information regarding its now well-  
18 documented practice of putting mortgagors into forbearance programs without their  
19 consent.<sup>7</sup>

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22 <sup>5</sup>       [https://www.justice.gov/opa/pr/wells-fargo-agrees-pay-3-billion-resolve-](https://www.justice.gov/opa/pr/wells-fargo-agrees-pay-3-billion-resolve-criminal-and-civil-investigations-sales-practices)  
23 [criminal-and-civil-investigations-sales-practices](https://www.justice.gov/opa/pr/wells-fargo-agrees-pay-3-billion-resolve-criminal-and-civil-investigations-sales-practices) (last visited August 14, 2020).

24 <sup>6</sup>       [https://www.nbcnews.com/business/personal-finance/more-wells-fargo-](https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610)  
25 [customers-say-bank-decided-pause-their-mortgage-n1234610](https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610) (last visited August 14,  
26 2020).

27 <sup>7</sup>       [https://www.warren.senate.gov/imo/media/doc/2020.07.29%20Letter%20to%20](https://www.warren.senate.gov/imo/media/doc/2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings.pdf)  
28 [0Wells%20Fargo%20on%20Forbearance%20Filings.pdf](https://www.warren.senate.gov/imo/media/doc/2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings.pdf) (last visited August 14,  
2020).





1           31. Defendant Wells Fargo & Company is a Delaware corporation  
2 headquartered in San Francisco, California.

3           32. Defendant Wells Fargo & Company is a diversified financial services  
4 company that provides banking, insurance, investments, mortgage banking and other  
5 products and services to consumers, businesses and other institutions.

6           33. Defendant Wells Fargo & Company is reported to have  
7 approximately \$1.9 trillion in assets.

8           34. Defendant Wells Fargo & Company is the parent corporation of  
9 Defendant Wells Fargo Bank, N.A.

10          35. Upon information and belief, Defendant Wells Fargo & Company  
11 exercises specific and financial control over the operations of Wells Fargo Bank,  
12 N.A., dictates the policies, procedures and practices of Defendant Wells Fargo Bank  
13 N.A., exercises power and control over the specific activities upon which the claims  
14 herein are based, and is the ultimate recipient of the ill-gotten gains described  
15 herein.

16          36. Defendant Wells Fargo Bank, N.A. is a national association that is  
17 headquartered in South Dakota.

18          37. Defendant Wells Fargo Bank, N.A. conducts mortgage servicing  
19 operations through its Wells Fargo Home Mortgage division, which is headquartered  
20 in Des Moines, Iowa.

21          38. Plaintiffs' mortgages are currently serviced by Defendant Wells  
22 Fargo Bank, N.A.

23                                   **JURISDICTION & VENUE**

24          39. Subject matter jurisdiction exists in this Court under the Class Action  
25 Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), because certain Plaintiffs are  
26 residents of different states (Georgia and New York, respectively) than that of  
27 Defendant Wells Fargo & Company who has its principal place of businesses in  
28 California and is incorporated in Delaware and Defendant Wells Fargo Bank, N.A.,



1 which has its principal place of business in South Dakota.

2 40. When aggregated among a proposed class in the thousands, the  
3 amount in controversy exceeds \$5,000,000—exclusive of interest and costs—the  
4 threshold for federal court jurisdiction.

5 41. Both diversity jurisdiction and the damages requirement under CAFA  
6 are satisfied, and this Court therefore has subject matter jurisdiction.

7 42. This Court has personal jurisdiction over Defendant Wells Fargo &  
8 Company which has its principal place of business in San Francisco, California and  
9 is authorized to do business in California, transacts business in California and  
10 maintains sufficient minimum contacts in California.

11 43. This Court has personal jurisdiction over Defendant Wells Fargo  
12 Bank, N.A., because it is authorized to do business in California, transacts business  
13 in California and maintains sufficient minimum contacts in California.

14 44. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and  
15 (c) because a substantial part of the events giving rise to these claims occurred in  
16 this District, Defendants regularly conduct business in this District and Defendant  
17 Wells Fargo & Company has its principal place of business in this District.

18 **FACTUAL ALLEGATIONS**

19 **I. The Federal Government Passes the CARES Act to Help with the**  
20 **Economic Harm Caused by the COVID-19 Pandemic.**

21 45. On March 11, 2020, the World Health Organization (“WHO”)  
22 declared the COVID-19 outbreak a global pandemic.

23 46. On March 13, 2020, the President issued the Coronavirus Disease  
24 2019 (COVID-19) Emergency Declaration, which declared that the COVID-19  
25 pandemic was of “sufficient severity and magnitude to warrant an emergency  
26 declaration for all states, territories and the District of Columbia.”

27 47. The economic fallout from COVID-19 was immediate and continues  
28 to be considerable.

1           48.       On March 25, 2020, in response to the economic damage beginning  
2 to be felt by Americans throughout the country, the United States Senate passed the  
3 Coronavirus Aid, Relief and Economic Security (“CARES”) Act.

4           49.       The CARES Act was passed by the House of Representatives the  
5 following day and signed into law on March 27, 2020. See generally CARES Act,  
6 Public Law No. 116-136.

7           50.       The CARES Act is the single-largest economic stimulus bill in  
8 United States’ history, allocating approximately \$2.2 trillion of support to  
9 individuals and business affected by the COVID-19 pandemic.

10 **II. The CARES Act Provides Relief to American Homeowners with**  
11 **Government-backed Mortgages.**

12           51.       A substantial part of the coronavirus aid package was designed to  
13 assist American homeowners with federally backed mortgages who were in distress  
14 as a result of the COVID-19 pandemic.

15           52.       First, the CARES Act assisted American homeowners with  
16 Government Sponsored Enterprise (“GSE”) backed mortgages by prohibiting their  
17 lenders and mortgage services from beginning a judicial or non-judicial foreclosure  
18 or from finalizing a foreclosure judgment or sale through at least August 31, 2020.

19           53.       Second, and most relevant to this action, the CARES Act provided  
20 homeowners with GSE-backed loans experiencing financial hardships because of  
21 COVID-19 with the option to request up to 180 days of forbearance on their  
22 mortgage.

23           54.       Specifically, Section 4022(b) provides, in relevant part, that:

24                   (1) IN GENERAL.—During the covered period  
25 [beginning February 15, 2020 and ending on June 30,  
26 2020], a borrower with a Federally backed mortgage loan  
27 experiencing a financial hardship due, directly or indirectly,  
28 to the COVID-19 emergency *may request* forbearance on  
the Federally backed mortgage loan, regardless of  
delinquency status, by—

- (A) submitting a request to the borrower's servicer and
- (B) affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency.

(2) DURATION OF FORBEARANCE.—*Upon a request by a borrower for forbearance* under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days *at the request of the borrower*, provided that, *at the borrower's request*, either the initial or extended period of forbearance may be shortened.

See CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, PL 116-136, March 27, 2020, 134 Stat. 281, § 4022(b) (emphasis added).

55. Section 4022(c) provides, in relevant part, that:

*Upon receiving a request for forbearance from a borrower under subsection (b), the servicer shall with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID-19 emergency* and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance, provided the forbearance up to 180 days, which may be extended for an additional period of up to 180 days *at the request of the borrower*, provided that, *the borrower's request for an extension* is made during the covered period, and, *at the borrower's request*, either the initial or extended period of forbearance may be shortened.

*Id.*, § 4022(c) (emphasis added).

56. These provisions make it abundantly clear that participation in a mortgagee's or servicer's mortgage COVID-19 forbearance program is voluntary and to be initiated only at the request of the mortgagor clients.

1        57. As explained by the CFPB, a forbearance is “when [] mortgage  
2 servicer[s] or lender[s] allow[ mortgagors] to pause (suspend), or reduce [their]  
3 mortgage payments for a limited period of time while [they] regain [their] financial  
4 footing.”<sup>9</sup>

5        58. Notably, while “the CARES Act provides many homeowners with the  
6 right to have all mortgage payments completely paused for a period of time,”  
7 “[f]orbearance doesn’t mean [mortgagors’] payments are forgiven or erased.  
8 [Rather, mortgagors] are still required to repay any missed or reduced payments in  
9 the future, which in most cases may be repaid over time.”<sup>10</sup>

10        59. The CARES Act provided for an extension of the forbearance period  
11 (for a total of up to 360 days) for homeowners that continued to experience  
12 difficulty in paying their mortgages once their initial 180-day term expired.<sup>11</sup>

13        60. In order for mortgagors to avail themselves of the COVID-19 mortgage  
14 forbearance option, they were instructed to contact their loan servicer to obtain  
15 information and, if appropriate, request forbearance.<sup>12</sup>

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20 <sup>9</sup> [https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-](https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/mortgage-relief/)  
21 [assistance/mortgage-relief/](https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/mortgage-relief/) (last visited August 14, 2020).

22 <sup>10</sup> *Id.*

23 <sup>11</sup> [https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-](https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/after-you-receive-relief/)  
24 [assistance/after-you-receive-relief/](https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/after-you-receive-relief/) (stating that “[i]f you still face financial hardship,  
25 you can request a forbearance extension. Under the CARES Act, if you have a  
26 federally or GSE-backed mortgage, you also can request and obtain an extension of  
the forbearance for up to an additional 180 days) (last visited August 14, 2020).

27 <sup>12</sup> *See* [https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-](https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/request-forbearance-or-mortgage-relief/)  
28 [assistance/request-forbearance-or-mortgage-relief/](https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/request-forbearance-or-mortgage-relief/) (last visited August 14, 2020).

1 **III. The Implementation of the CARES Act is Met with Confusion &**  
2 **Uncertainty.**

3 61. While the CARES Act was passed quickly and with laudable  
4 intentions, there has been a tremendous amount of consumer confusion around many  
5 aspects of the Act including the forbearance program.

6 62. Some of the terms are relatively straightforward in that lenders are not  
7 permitted to report forborne payments to the credit bureaus, which means that  
8 borrowers who request forbearance are not supposed to see any impact on their  
9 credit scores as a result of their participation in forbearance programs.

10 63. Additionally, the initial term of the mortgage forbearance program was  
11 designed to be 180 days and, after that term expires, lenders were instructed to work  
12 with borrowers to—upon request by the homeowners—extend the forbearance or  
13 establish a repayment plan.<sup>13</sup>

14 64. Leaving aside the issue of whether mortgagors are even aware that they  
15 are in a mortgage forbearance program, the provision that has caused the most  
16 confusion is that participating mortgagors often do not know if they have to get their  
17 mortgage current at the conclusion of the forbearance period or how their lender  
18 and/or servicer will treat the deferred payments.

19 65. Fannie Mae and Freddie Mac attempted to address the confusion  
20 attendant to the post-CARES Act forbearance loss mitigation landscape when they  
21 introduced the “COVID-19 Payment Deferral” option with Lender Letter (LL-2020-  
22 \_\_\_\_\_

23 <sup>13</sup> See [https://benefits.va.gov/homeloans/cares-act-frequently-asked-](https://benefits.va.gov/homeloans/cares-act-frequently-asked-questions.asp#FAQ5)  
24 [questions.asp#FAQ5](https://benefits.va.gov/homeloans/cares-act-frequently-asked-questions.asp#FAQ5) (stating that “[f]orbearance in the CARES Act is broken down  
25 into two pieces; an *initial* period and an *additional* period. For the initial period, you  
26 may notify your mortgage servicer that you are financially affected by the COVID-19  
27 emergency and request up to 180 days of forbearance. For the additional period, you  
28 may notify your mortgage servicer that you are still financially affected by the  
COVID-19 emergency and request up to 180 additional days of forbearance.”) (last  
visited August 14, 2020).

07) and Bulletin 2020-15.<sup>14</sup>

66. The COVID-19 Payment Deferral instructs that all forborne payments (up to 12 months) are to be placed into a non-interest bearing balance to be paid back at the end of the loan term.

67. The COVID-19 Payment Deferral brought Fannie Mae and Freddie Mac in line with the United States Department of Housing and Urban Development's ("HUD") COVID-19 National Emergency Standalone Partial Claim option, which provides borrowers with a junior mortgage (zero additional interest, no fees) not payable until the mortgage is paid off, comprised of the total amount of payments missed during a CARES Act forbearance period.<sup>15</sup>

68. Although various government entities attempted to clarify the law, the mortgagees and servicers fail to comply as evidenced by, among other things, a report published (in late April) by HUD's Office of Inspector General ("OIG"), which conducted a study of the top 30 mortgage servicers 22 days after the CARES Act was enacted.

69. That study, entitled Some Mortgage Loan Servicers' Websites Offer Information about CARES Act Loan Forbearance That Is Incomplete, Inconsistent, Dated, and Unclear, analyzed the information that mortgagees and servicers were providing to borrowers regarding forbearance.<sup>16</sup>

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<sup>14</sup> Lender Letter 2020-07 is available here: <https://singlefamily.fanniemae.com/media/22916/display> and Bulletin 2020-15 is available here: <https://guide.freddiemac.com/app/guide/bulletin/2020-15> (last visited August 14, 2020).

<sup>15</sup> HUD's Mortgagee Letter 2020-06 is available here: <https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf> (last visited August 14, 2020).

<sup>16</sup> The report is available here: <https://www.hudoig.gov/sites/default/files/2020-04/Single%20Family%20Mortgage%20Forbearance%20Brief.pdf> (last visited August 14, 2020).

1        70. HUD's OIG ultimately concluded that information from mortgagees  
2 and servicers was "incomplete, inconsistent, dated, and unclear" because, among  
3 other things, not all mortgage servicer websites provided readily accessible  
4 information, the information about the duration of forbearance was inconsistent; the  
5 information was not brought up to date to meet the mandates of the final CARES  
6 Act; and/or the servicer "gave the impression" that a lump sum payment was  
7 necessary at the end of the forbearance.

8        71. The CFPB's May 2020 Complaint Bulletin, covering complaints  
9 mentioning coronavirus keywords, echoed HUD OIG findings and the House  
10 Financial Services Committee's criticisms, observing, among common complaints,  
11 that consumers were unable to reach customer service representatives and faced long  
12 hold times, and were informed by their mortgage servicers that they would have to  
13 repay 90-day forbearances in a lump sum at the end of the 90-day period.<sup>17</sup>

14 **III. Approximately 4.58 Million Homeowners with Federally-backed Loans**  
15 **Are in a Forbearance Program, Many of them Unwittingly.**

16        72. As of June 30, 4.58 million homeowners are in COVID-19 related  
17 forbearance plans, representing 8.6% of all active mortgages.<sup>18</sup>

18        73. Some 6.8% of all GSE-backed loans and 12.3% of all FHA/VA loans  
19 are currently in forbearance plans.<sup>19</sup>

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21 <sup>17</sup> The CFPB's May Bulletin is accessible here:  
22 [https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-consumer-](https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-consumer-complaint-bulletin/)  
23 [complaint-bulletin/](https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-consumer-complaint-bulletin/) and the Report, entitled *Complaint Bulletin, Complaints*  
24 *Mentioning Coronavirus Keywords*, is accessible here:  
25 [https://files.consumerfinance.gov/f/documents/cfpb\\_complaint-bulletin\\_coronavirus-](https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin_coronavirus-complaints.pdf)  
26 [complaints.pdf](https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin_coronavirus-complaints.pdf) (last visited August 14, 2020).

27 <sup>18</sup> See [https://www.cnbc.com/2020/07/03/loans-in-coronavirus-mortgage-](https://www.cnbc.com/2020/07/03/loans-in-coronavirus-mortgage-bailouts-see-largest-weekly-decline-yet.html)  
28 [bailouts-see-largest-weekly-decline-yet.html](https://www.cnbc.com/2020/07/03/loans-in-coronavirus-mortgage-bailouts-see-largest-weekly-decline-yet.html) (last visited August 14, 2020).

<sup>19</sup> See [https://www.blackknightinc.com/blog-posts/forbearance-volumes-reverse-](https://www.blackknightinc.com/blog-posts/forbearance-volumes-reverse-course-for-largest-decline-yet/)  
[course-for-largest-decline-yet/](https://www.blackknightinc.com/blog-posts/forbearance-volumes-reverse-course-for-largest-decline-yet/) (last visited August 14, 2020).

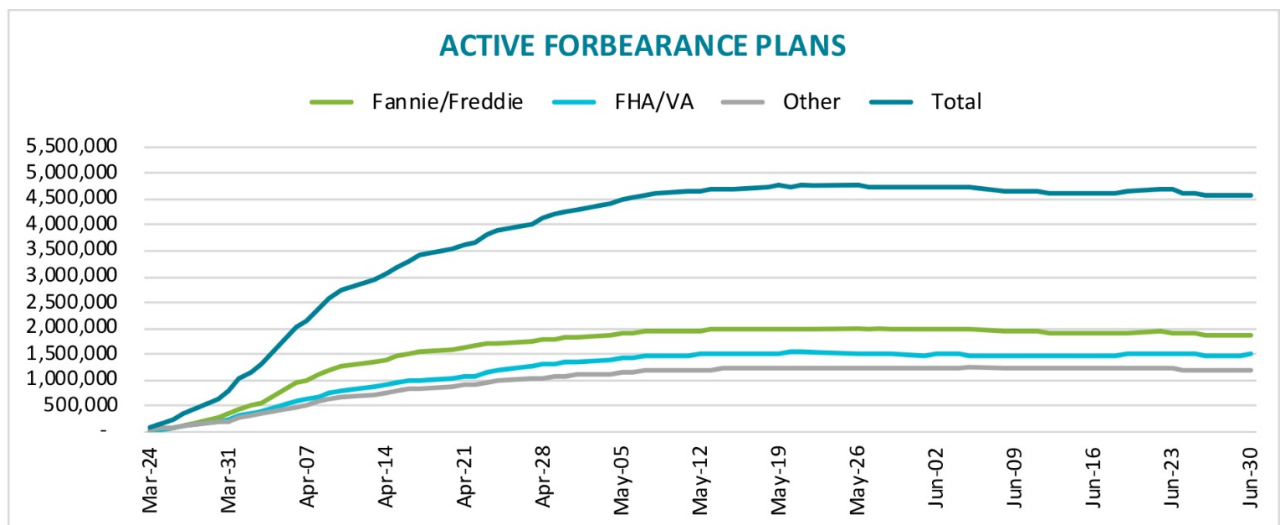


74. Federally backed mortgages (including GSEs Freddie Mac and Fannie Mae) constitute 62 percent of all first lien mortgages.<sup>20</sup>

75. Mortgages owned by private lenders, such as banks, are not included in the relief proscribed by the CARES Act.

76. About 30%, or roughly 14.5 million U.S. mortgages, are privately owned and not backed by any federal agency.<sup>21</sup>

77. Approximately 11% of these privately-held mortgages remain in some type of forbearance or deferment program.



78. Wells Fargo has stated publicly that it has deferred 2.5 million payments for consumer and small business customers since the start of the pandemic.<sup>22</sup>

<sup>20</sup> See <https://www.americanactionforum.org/insight/the-cares-act-and-mortgage-servicers/#ixzz6SxUvL79W> (last visited August 14, 2020).

<sup>21</sup> See <https://www.cnbc.com/2020/07/15/privately-held-mortgage-forbearance-may-be-difficult-for-americans-to-navigate.html> (last visited August 14, 2020).

<sup>22</sup> See <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/> (last visited August 14, 2020).

**IV. Wells Fargo Unilaterally Opted Homeowners into Forbearance Program and Extended Homeowners' Forbearance Without Their Consent**

79. Since the passage of the CARES Act in late March, millions of homeowners across the country have attempted to obtain information from their mortgage servicers and lenders as to the specifics of their COVID-19 forbearance program.<sup>23</sup>

80. As numerous media reports have detailed, many servicers unilaterally put borrowers into their mortgage forbearance program despite no clear indication of consent.<sup>24</sup>

81. Thousands of homeowners were put into mortgage forbearance programs they did not request or had their forbearance period extended for an additional period of time without their consent, causing substantial problems for those homeowners.

82. Being in forbearance prevents those homeowners from taking out new home loans or refinancing their existing mortgages (not to mention obtaining any additional credit).

83. As told by a Wells Fargo mortgage servicer client, it is virtually impossible to obtain any form of credit for up to a year after a forbearance program has concluded:

the note on his credit report saying the loan is in forbearance makes it impossible for him to refinance. Fannie Mae and Freddie Mac, which, along with the Federal Housing Administration and the Department of Veterans Affairs, fund or insure the vast majority of mortgages from lenders, do not allow borrowers with a

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<sup>23</sup> *Homeowners are getting mortgage relief they didn't want*, Anna Bahney, May 2020 (<https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html>) (last visited August 14, 2020).

<sup>24</sup> *See* <https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html> (last visited August 14, 2020).

1 loan in forbearance to either refinance or obtain a new  
2 loan until one year after the loan payments are up to date  
3 again.<sup>25</sup>

4 84. When reached for comment, Wells Fargo stated: “[w]e encourage  
5 customers to continue making their payments if they can but are granting an  
6 immediate three-month payment suspension for any Wells Fargo Home Lending  
7 mortgage or home equity customer who requests assistance. For customers who  
8 contact us to take advantage of a payment suspension, we won’t report past-due  
9 status to the consumer reporting agencies or charge late fees during the suspension  
10 period.”<sup>26</sup>

11 85. Wells Fargo continued by stating that “[c]ustomers who reach us by  
12 telephone will get an immediate verbal confirmation of their three-month payment  
13 suspension. Because our contact centers are experiencing significant call volumes,  
14 we encourage mortgage customers to log into their account on WellsFargo.com and  
15 click on the banner in the mortgage account, follow the easy steps to submit request  
16 for payment relief, and receive immediate confirmation. In either case, customers  
17 will receive a confirmation letter within 7-10 days after our initial response.”<sup>27</sup>

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18  
19 <sup>25</sup> See [https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-](https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html)  
20 [mortgage-bailouts-by-mistake.html](https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html) (last visited August 14, 2020) (stating that “It also  
21 puts barriers in front of homeowners who could really benefit now from refinancing  
22 and saving on their monthly payments. Servicers are swamped with those requests as  
23 well. Applications to refinance a home loan are currently up more than 200% from a  
24 year ago”).

24 <sup>26</sup> See [https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-](https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5)  
25 [seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5](https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5) (last visited  
26 August 14, 2020).

26 <sup>27</sup> See [https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-](https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5)  
27 [seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5](https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5) (last visited  
28 August 14, 2020).

1        86. Wells Fargo has acknowledged that merely inquiring about  
2 forbearance options should not result in a borrower's unwitting entry into the  
3 program.

4        87. Specifically, Tom Goyda, a Wells Fargo consumer lending  
5 spokesperson admitted that, "[j]ust asking about a forbearance should not result in a  
6 forbearance being applied."<sup>28</sup>

7        88. Despite these public statements, Wells Fargo has publicly  
8 acknowledged unilaterally opting Chapter 13 debtors into its COVID-19 mortgage  
9 forbearance program.

10       89. According to a recent media report, Wells Fargo monitored the  
11 Chapter 13 bankruptcy dockets of its debtor clients and unilaterally opted them into  
12 its mortgage forbearance program.<sup>29</sup>

13       90. That article, entitled *Troy Harlow has always made sure to pay his*  
14 *mortgage on time Wells Fargo had other plans for him*, details the plight of  
15 numerous borrowers who had been unwittingly enrolled in Wells Fargo's mortgage  
16 forbearance program:

17                None of the borrowers in the lawsuit who were contacted  
18 by NBC News told the bank that they'd been affected by  
19 COVID-19, and ***none had requested the bank's assistance***  
20 ***because of it. Nor had they requested loan modifications***  
21 ***when Wells Fargo claimed they wanted forbearance.*** In  
22 addition, none of the borrowers or their attorneys say they  
23 were contacted by Wells Fargo.

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24  
25 <sup>28</sup> See [https://www.cnn.com/2020/05/20/success/mortgage-forbearance-](https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html)  
26 [homeowner-complaints-coronavirus/index.html](https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html) (last visited August 14, 2020).

27 <sup>29</sup> See [https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-](https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635)  
28 [made-sure-pay-his-mortgage-time-n1233635](https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635) (last visited August 14, 2020).

1           Asked about the discrepancies, Wells Fargo said that  
2           because it had seen references to COVID-19 in the  
3           borrowers' court filings, it provided forbearance.<sup>30</sup>

4           91.       When reached for comment, Wells Fargo did not deny the practice of  
5           unilaterally enrolling unwitting persons to its mortgage forbearance program:

6                     During this unprecedented time, we've focused on ensuring  
7                     that our customers who need assistance receive the benefits  
8                     of available relief programs, the statement said.

9                     In the early days of the pandemic, we provided immediate  
10                    payment relief to customers in bankruptcy if a review of  
11                    their court filings indicated they were impacted by COVID-  
12                    19 or if they had a loan modification review in process.

13                    In those cases, we notified the customers or their attorneys  
14                    and filed a notice with the court. We followed up with  
15                    customers in these circumstances after some raised  
16                    questions and, in the majority of cases, those we have  
17                    contacted wanted the payment relief. If a customer does not  
18                    want a forbearance, we remove it and notify the bankruptcy  
19                    courts.<sup>31</sup>

20           92.       The Wells Fargo spokeswoman declined to say whether the bank has  
21           benefited financially from making unrequested forbearance filings.<sup>32</sup>

22           93.       But, upon information and belief, Wells Fargo is compensated  
23           financially by the various federal agencies on whose behalf it services borrowers'  
24           loans when it files forbearance notices and when it completes loan retention workout

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25           <sup>30</sup>       See [https://www.nbcnews.com/business/personal-finance/troy-harlow-has-](https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635)  
26           [always-made-sure-pay-his-mortgage-time-n1233635](https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635) (last visited August 14, 2020)  
27           (emphasis added).

28           <sup>31</sup>       *Id.* (emphasis added).

<sup>32</sup>       *Id.*

1 options with borrowers whose loans have been placed into forbearance pursuant to  
2 the CARES Act.

3 94. Upon information and belief, for each loan placed into forbearance that  
4 Wells Fargo subsequently modifies in accordance with Fannie Mae and Freddie  
5 Mac's matrix for loan retention workout options, Wells Fargo receives an incentive  
6 fee of up to \$1,500.<sup>33</sup>

7 95. Upon information and belief, for each loan placed into forbearance for  
8 which Wells Fargo subsequently defers repayment of some or all of the forborne  
9 payments until loan maturity in accordance with Fannie Mae and Freddie Mac's  
10 matrix for loan retention workout options, Wells Fargo receives an incentive fee of  
11 \$500.

12 96. Upon information and belief, for each loan placed into forbearance for  
13 which Wells Fargo enters into a completed repayment plan in accordance with Fannie  
14 Mae and Freddie Mac's matrix for loan retention options, Wells Fargo receives an  
15 incentive fee of \$500.<sup>34</sup>

16 97. Upon information and belief, Wells Fargo also receives servicing  
17 income for the loans it services, and Plaintiffs are informed and believe and therefore  
18 allege that Wells Fargo is incentivized to modify its customers' mortgage loans  
19 following a CARES Act forbearance in a way that extends the loan's term and lowers  
20 the borrower's monthly mortgage payment in order to prevent "run off" of loan  
21 servicing rights, which occurs when borrowers sell their homes or refinance their  
22 mortgages.

23 98. Implementing forbearance plans without customer approval is  
24 \_\_\_\_\_

25 <sup>33</sup> See [https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-](https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#73c99373edc5)  
26 [seeking-mortgage-forbearance-hit-ambiguity-snafus/#73c99373edc5](https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#73c99373edc5) (last visited  
27 August 14, 2020).

28 <sup>34</sup> *Id.*

1 reminiscent of other troubling practices at Wells Fargo in recent years.<sup>35</sup>

2       99. Starting next month, Fannie Mae has new rules benefiting loan servicers  
3 like Wells Fargo whose customers are in forbearance.<sup>36</sup> Normally, banks handling  
4 home loans held by Fannie Mae must continue forwarding borrowers' mortgage  
5 payments to the government entity, even when they stop paying.<sup>37</sup>

6       100. But under the new rules, banks can stop advancing Fannie Mae  
7 borrowers' mortgage payments after four months if the borrowers have stopped  
8 paying because they are in forbearance programs.<sup>38</sup>

9 **V. Impacts of Unwanted Forbearance on Consumers.**

10       101. Wells Fargo's practice of unilaterally opting mortgagors into unwanted  
11 forbearance program is not limited to its Chapter 13 debtor clients.

12       102. Rather, as detailed extensively herein, many homeowners were put into  
13 forbearance programs they did not want which has caused injury to those  
14 homeowners.<sup>39</sup>

15       103. Even if mortgagees do not report forborne accounts as delinquent, there  
16 are nonetheless many practical and immediate impacts of participating in a mortgage  
17 forbearance program; chief among them is that participation in a forbearance program  
18 prohibits homeowners from taking out new loans or refinancing their existing  
19

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20 <sup>35</sup> See [https://www.nbcnews.com/news/all/wells-fargo-pay-3-billion-over-fake-](https://www.nbcnews.com/news/all/wells-fargo-pay-3-billion-over-fake-account-scandal-n1140541)  
21 [account-scandal-n1140541](https://www.nbcnews.com/news/all/wells-fargo-pay-3-billion-over-fake-account-scandal-n1140541) (last visited August 14, 2020).

22 <sup>36</sup> [https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-](https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635)  
23 [made-sure-pay-his-mortgage-time-n1233635](https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635) (last visited August 14, 2020).

24 <sup>37</sup> *Id.*

25 <sup>38</sup> *Id.*

26 <sup>39</sup> See [https://www.cnn.com/2020/05/20/success/mortgage-forbearance-](https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html)  
27 [homeowner-complaints-coronavirus/index.html](https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html) (last visited August 14, 2020).  
28



1 mortgages.<sup>40</sup>

2 104. Wells Fargo has made note on the reports they send to credit reporting  
3 agencies that the homeowners who they have placed in forbearance—including those  
4 who never requested it—have suspended their mortgage payments.<sup>41</sup>

5 105. Fannie Mae and Freddie Mac, which, along with the Federal Housing  
6 Administration and the Department of Veterans Affairs, fund or insure the vast  
7 majority of mortgages from lenders, do not allow borrowers with a loan in  
8 forbearance to either refinance or to obtain a new loan until one year after the loan  
9 payments are up to date again.<sup>42</sup>

10 **VI. Wells Fargo's Practice of Unilaterally Opting Consumers Into a**  
11 **Forbearance Program Prompts Hundreds of Consumer Complaints.**

12 106. The lack of clarity around Wells Fargo's mortgage forbearance programs  
13 has caused great stress to thousands of homeowners and led to many consumer  
14 complaints.

15 107. Frustration seeps through long threads on social media channels  
16 populated with mortgage borrowers unnerved by, among other things, their inability  
17 to reach lenders over the phone and upset with the forbearance assistance they are  
18 offered once someone answers their calls.<sup>43</sup>

19 \_\_\_\_\_  
20 <sup>40</sup> The Cares Act is clear that participation in a forbearance program should not  
21 negatively impact mortgagee's credit scores. According to the CARES Act, if a  
22 mortgagee is in forbearance because of the pandemic, their loan status is to be  
23 reported as current on payments.

24 <sup>41</sup> See <https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html> (last visited August 14, 2020).

25 <sup>42</sup> *Id.*

26 <sup>43</sup> <https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5> (last visited August 14,  
27 2020).  
28

1        108. Complaints filed with the CFPB have risen dramatically since the  
2 beginning of the COVID-19 outbreak, and many of those come from homeowners  
3 who complain that they were placed in forbearance without requesting it.<sup>44</sup>

4        109. Oversight of the forbearance program is woefully inadequate, so it's  
5 unsurprising that the biggest coronavirus problems are related to mortgages," said  
6 Mike Litt, the consumer campaign director at U.S. PIRG.<sup>45</sup>

7        110. A representative complaint of a person who filed a complaint with the  
8 CFPB noted that Wells Fargo unilaterally opted her into a mortgage forbearance  
9 program without her consent:

10                I contacted my mortgage servicer . . . for informational  
11                purposes only, to see what programs they were offering  
12                during the COVID-19 pandemic . . . . I stated I did NOT  
13                want to be on a forbearance plan.

14                The stress of the situation has affected my physical and  
15                mental well-being, strained my personal relationships as  
16                well as the ability to do my job. I have spent hours on  
17                the phone, and writing letters . . . I wonder, how many  
18                others this is happening to?<sup>46</sup>

19        111. A recent article in Forbes details the experience of Morgan Davis, a  
20 furloughed clothing designer, who called Wells Fargo to ask for help with her FHA  
21 loan.<sup>47</sup>

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22 <sup>44</sup> <https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html> (last visited August 14, 2020).

23 <sup>45</sup> *Id.*

24 <sup>46</sup> <https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html> (last visited August 14, 2020).

25 <sup>47</sup> <https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5> (last visited August 14, 2020).

1           112. According to the borrower, Wells Fargo offered to suspend her mortgage  
2 for three payments without penalty, but Ms. Davis declined because “at the end of  
3 those three months, all my mortgage payments would be due at once.”<sup>48</sup>

4           113. Unbeknownst to Ms. Davis and against her wishes, Wells Fargo  
5 unilaterally opted her into a mortgage forbearance program.

6           114. Ms. Davis only found out that she was entered into the program when  
7 she attempted to pay her next month’s mortgage and was informed that her “Wells  
8 Fargo checking and savings accounts are ineligible to pay [her] Wells Fargo  
9 mortgage.”

10           115. According to the Forbes article, Ms. Davis also received a letter  
11 confirming the receipt of her loan modification request, a request she says she never  
12 made.<sup>49</sup>

13           116. Similarly, another Wells Fargo customer, Tammi Wilson, claims her  
14 mortgage was placed in forbearance after she clicked a link to coronavirus relief  
15 information on the bank’s website and provided her contact information to receive  
16 related program materials.<sup>50</sup>

17           117. According to a recent article, *Wells Fargo says it ‘misinterpreted*  
18 *customers’ intentions’ in some forbearance cases*, when Ms. Wilson later discovered  
19 that she no longer had an active account when she logged on to make a payment on  
20 her loan:

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21  
22  
23 <sup>48</sup> [https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-](https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5)  
24 [mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5](https://www.forbes.com/sites/dimawilliams/2020/04/03/borrowers-seeking-mortgage-forbearance-hit-ambiguity-snafus/#7e6d2be8edc5) (last visited August 14,  
25 2020).

26 <sup>49</sup> *Id.*

27 <sup>50</sup> [https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-](https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/)  
28 [payments/582284/](https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/) (last visited August 14, 2020).

1 I click this button and next thing I know, I'm getting a  
2 thing that says I'm deferred and I can't reverse something  
3 I didn't even want. If you're going to help people, there  
4 is a super simple first step — just ask, 'Do you need our  
help?'<sup>51</sup>

5 118. Another mortgagor similarly called Wells Fargo to get information and  
6 later found out his mortgage was in forbearance.<sup>52</sup>

7 119. The borrower said he sent an email to Wells Fargo, which services his  
8 loan, because he “was asking to be educated on what [his] options were [but  
9 s]omeone put me in this and never told me what it was.”

10 120. As with Ms. Davis and Ms. Wilson, when this Wells Fargo servicer  
11 client went to make his next payment, he was informed that he could not because  
12 there was no “eligible account to make the payment on.”<sup>53</sup>

13 121. When this Wells Fargo customer attempted to refinance (in order to take  
14 advantage of record low mortgage rates), his mortgage broker informed him that the  
15 loan was in forbearance, and he was therefore unable to refinance.

16 122. The borrower again contacted Wells Fargo and asked to be removed  
17 from forbearance. That was April 23, and he says his loan is still listed as in  
18 forbearance.

19 123. Similarly, a recent CNN.com article, entitled Homeowners are getting  
20 mortgage relief they didn't want, details additional instances of the problem:

21 'I never asked to be in the program,' said D.J.  
22 Stavropoulos, a real estate agent in Atlanta who said he  
23 called his mortgage servicer, Wells Fargo, in March just

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24 <sup>51</sup> *Id.*

25 <sup>52</sup> [https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-](https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html)  
26 [mortgage-bailouts-by-mistake.html](https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html)

27 <sup>53</sup> *Id.*  
28

1 to get information about how a forbearance would work.

2 Nonetheless, at the beginning of May, he received a letter  
3 from Wells Fargo confirming that his loan was in  
4 forbearance.

5 'I was alarmed they were doing this behind my back,'  
6 Stavropoulos said. "I think the average person is as  
7 confused as I was and may be surprised to find they are  
8 in forbearance and not know it."<sup>54</sup>

9 124. Unfortunately, these Wells Fargo clients' stories are not isolated  
10 incidents.

11 125. Rather, the CFPB website is replete with additional instances of persons  
12 who were involuntarily and unwittingly opted into a mortgage forbearance program  
13 with Wells Fargo.

14 126. For instance, this Wells Fargo customer was involuntarily placed into  
15 forbearance twice:

16 My account with Wells Fargo was placed in forbearance  
17 or trial plan by mistake in XXXX, twice. First week of  
18 XX/XX/2020, the account goes into forbearance,  
19 payments are not accepted based on a problem with  
20 Wells Fargo systems and then the account goes out of the  
21 plan. Later, at the end of XXXX the account goes again  
22 in forbearance and I had to call Wells Fargo once again  
23 to get it removed. They finally did this on XXXX  
24 XXXX. I spoke with several representatives, the last one  
25 being XXXX XXXX who after several phones told me  
26 on XX/XX/XXXX that he got approval to issue a letter  
27 stating that the account was placed in forbearance by  
28 mistake and that he was only waiting for the legal  
department to approve the language of such letter. After  
waiting for a week, I spoke again to XXXX. XXXX on  
XX/XX/XXXX, who informed of the decision by Wells  
Fargo to not provide such letter. This situation has

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54 <https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html> (last visited August 14, 2020).

generated significant issues on my side, as other lenders are now reluctant to provide any financing until the situation gets resolved or some time goes by before they are willing to look at my applications again. The major issue here, other than the account being inadvertently placed in forbearance is that Wells Fargo continue to mislead customers telling them that accounts entering forbearance during covid19 will not impact credit scores, but they massively fail in disclosing that credit score agencies will still be informed about the situation and that a note on the report will indicate that at some point, the account was in forbearance. Even if this does not affect scores, it DOES affect customers with an impeccable record of never having missed a single payment or liability in their whole lives. Wells Fargo continue with their old practice of misleading customers. A smart lender will always look through scores and if there is anything else on the report that could be a cause for concern, then it's reasonable to believe that a note on the report such as the one Wells Fargo has now created on mine, could become a big issue to me in the future.<sup>55</sup>

127. Another Wells Fargo customer called to obtain information regarding the mortgage forbearance program and was unwittingly opted into the program ultimately damaging his credit score:

I called Wells Fargo for information about what to do With mortgage during covid pandemic being wife and I lost our employment during New York State pause order. I was offered a forbearance agreement or deferral that I was assured I would receive paper work on and it would not be reported to credit reporting agency during this time of national pandemic. I was reluctant to go into anything but requested information be sent to me. Credit report indicates In forbearance it also indicates last payment received was XXXX but I have paid XXXX XXXX and XXXX. This has negatively affected My

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<sup>55</sup> <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3678207> (last visited August 14, 2020).

1 credit with all credit reporting agencies. I did not sign  
 2 anything to agree to forbearance and subsequent calls to  
 3 them I stressed that Im paying my mortgage and dont  
 4 want a forbearance. Instead they listed it on my credit  
 5 without authorization. When I called them they said it  
 was an error n they are working on it. They ruined my  
 wife and my credit.<sup>56</sup>

6 128. These Wells Fargo clients were likewise opted into Wells Fargo's  
 7 mortgage forbearance program without their consent:

- 8 • Wells Fargo put me into CARES act forbearance  
 9 without my consent. I was unable to make a payment  
 10 online like I usually do. I called and was on hold for  
 11 an hour but finally was able to talk to a rep, named  
 12 XXXX. I told them they put me into forbearance  
 13 without my consent. He apologized and said that the  
 14 system is like a " hair trigger " even though I did  
 15 nothing to start a forbearance, I've never missed a  
 16 payment, have no reason to apply for forbearance and  
 17 am able to make payments. The rep said he would  
 18 reverse the forbearance but that it would take 2-3 days  
 19 and took my payment over the phone. This took place  
 20 on XX/XX/20. I have recently been looking into  
 21 refinancing with rates so low. I get an email today  
 22 from my new potential lender stating that my credit  
 23 report, which they pulled XX/XX/20, showed that my  
 24 current mortgage with Wells Fargo is in forbearance,  
 25 labeled " payment deferred ". This may affect my  
 26 ability to refinance my home. Also, Wells Fargo is  
 contacting me about refinancing. On the XXXX  
 website and under the CARES act it states: As part of  
 the recently enacted Coronavirus Aid, Relief and  
 Economic Security ( CARES ) Act, mortgage  
 accounts in forbearance as a result of COVID-19  
 cannot be reported negatively to the credit bureaus by  
 lenders. The wrongs are in apply forbearance to my

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27 <sup>56</sup> [https://www.consumerfinance.gov/data-research/consumer-](https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3662758)  
 28 [complaints/search/detail/3662758](https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3662758) (last visited August 14, 2020).



1 mortgage without verbal OR written consent and the  
 2 fact that they reported this forbearance to the credit  
 3 bureaus. And now on my account showing the  
 4 payment I made on the phone for my XXXX payment  
 5 is deemed " unapplied funds " with the description on  
 6 their website : We have received funds that are not  
 7 sufficient to make a full payment on your loan. If we  
 8 are automatically withdrawing your payments based  
 9 on a recurring weekly, bi-weekly, or semi-monthly  
 10 schedule, your funds remain unapplied until we have  
 11 received an amount sufficient to make a full monthly  
 12 payment for you. If you are on a repayment plan and  
 have made an agreement to make payment amounts  
 that are different from your regular monthly payment,  
 some funds may be unapplied. This is infuriating and  
 could cost me ~ \$ XXXX in interest savings and a  
 decrease in previously exceptional credit of XXXX.<sup>57</sup>

- 13 • Due to covid19 I asked for information on the wells  
 14 Fargo forbearance process on my mortgage. I was told  
 15 I would receive information by mail. When I received  
 16 my letter I was told that I was eligible and to go  
 17 online to confirm and cancel my automatic payments.  
 18 Also it stated that if I didn't need the assistance no  
 19 action was needed I could disregard and nothing more  
 20 will be done. XX/XX/XXXX I noticed my payment  
 21 didnt get drafted. Called XX/XX/XXXX. Was told I  
 22 was in the forbearance program. I never requested this  
 23 to be done, only asked for information. I requested  
 that day and twice since requested but it has not  
 processed to be removed from the program.<sup>58</sup>
- 24 • Due to a job loss, I reached out to Wells Fargo and  
 asked for information on their Covid-19 mortgage

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25 <sup>57</sup> [https://www.consumerfinance.gov/data-research/consumer-](https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3663700)  
 26 [complaints/search/detail/3663700](https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3663700) (last visited August 14, 2020).

27 <sup>58</sup> [https://www.consumerfinance.gov/data-research/consumer-](https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3661535)  
 28 [complaints/search/detail/3661535](https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3661535) (last visited August 14, 2020).

1 relief program. To clarify, I only asked for  
 2 information on the program. The representative on the  
 3 phone stated that an information packet would be  
 4 mailed to me. About a week later, a letter arrived from  
 5 Wells Fargo stating that they are " confirming short  
 6 term payment relief for the account. " This was not  
 7 what I had requested. In addition, the letter states "  
 8 We won't report this account to consumer reporting  
 9 agencies. " It has now come to light that Wells Fargo  
 10 has put a forbearance on the mortgage, preventing any  
 11 ability to refinance. I am current on my mortgage  
 12 payments and did not want to be part of their relief  
 13 program, but now I have a forbearance blemish on my  
 14 mortgage.<sup>59</sup>

## 15 **FACTS SPECIFIC TO REPRESENTATIVE PLAINTIFFS**

### 16 **I. Facts Specific to Plaintiff Brett Jacob**

17 129. Plaintiff Brett Jacob has a mortgage serviced by Wells Fargo.

18 130. Wells Fargo collects payments and performs services for Mr. Jacob,  
 19 the borrower.

20 131. On or about March 16, 2020, Mr. Jacob called Wells Fargo and asked  
 21 that his mortgage payments no longer be automatically debited from his bank  
 22 account.

23 132. Mr. Jacob requested that he be permitted to make payments at a time  
 24 and in a manner of his own choosing. Wells Fargo honored Mr. Jacob's request  
 25 and, a few days later, Mr. Jacob received a letter from Wells Fargo dated March 20,  
 26 2020 confirming that Wells Fargo had "completed your request to suspend your  
 27 automatic mortgage payments."

28 133. However, approximately one week later, Mr. Jacob received a second

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29 <sup>59</sup> [https://www.consumerfinance.gov/data-research/consumer-](https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898)  
 30 [complaints/search/detail/3658898](https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898) (last visited August 14, 2020).

1 letter from Wells Fargo dated March 26, 2020. This letter informed Mr. Jacob,  
2 much to his surprise, that Wells Fargo had placed his mortgage into short-term  
3 payment relief—or forbearance—for six months. The letter stated that his monthly  
4 mortgage obligations had been suspended until October 1, 2020.

5 134. Mr. Jacob never requested that Wells Fargo place his mortgage into  
6 forbearance.

7 135. Since being placed in forbearance, Mr. Jacob has tried to make  
8 mortgage payments, but Wells Fargo suspended his online payment option.

9 136. Further, though Wells Fargo assures its customers otherwise, the  
10 forbearance that he did not request is reflected on his credit report.

11 137. After Wells Fargo placed him in forbearance, Mr. Jacob attempted to  
12 secure a small-business loan but was denied, at least in part, because the lender  
13 pulled his credit report and saw that his mortgage had been placed in forbearance.

14 138. In addition, Mr. Jacob's attempt to refinance his mortgage and to  
15 obtain a lower interest rate on his mortgage was denied because Wells Fargo placed  
16 his mortgage into forbearance without his consent.

17 139. In short, Mr. Jacob did not request a forbearance of his mortgage loan  
18 payment obligations, did not contact Wells Fargo about a forbearance and did not—  
19 and does not—want a forbearance of his mortgage payment obligations.

20 140. Wells Fargo placed Mr. Jacob's loan in forbearance without his  
21 consent, and incorrectly reported this to credit reporting agencies such that it  
22 appears on Mr. Jacob's credit report.

23 **II. Facts Specific to Plaintiff Samara Green**

24 141. Plaintiff Samara Green has a mortgage serviced by Wells Fargo.

25 142. Wells Fargo collects payments and performs services for Ms. Green,  
26 the borrower.

27 143. On or about June 15, 2020, a representative from Wells Fargo called  
28

1 Ms. Green to address concerns Ms. Green had about her escrow payments. During  
2 this call, the Wells Fargo representative explained to Ms. Green about the option of  
3 placing her mortgage in forbearance.

4 144. Ms. Green told the Wells Fargo representative that she was not  
5 interested in Wells Fargo's forbearance program.

6 145. Prior to the June 15, 2020 phone call, Ms. Green had already made a  
7 mortgage payment to Wells Fargo on June 12, 2020.

8 146. However, unbeknownst to Ms. Green, her June 12, 2020 payment  
9 was never applied to her mortgage or her escrow accounts because Wells Fargo  
10 placed her mortgage into forbearance prior to the application of her payment and  
11 without her knowledge or consent.

12 147. On or around June 26, 2020 Ms. Green called Wells Fargo again to  
13 further inquire about fees and the application of escrow payments. During this  
14 phone call, the Wells Fargo representative informed Ms. Green that her mortgage  
15 had been placed in forbearance.

16 148. Ms. Green informed the representative that she had never requested  
17 or consented to a forbearance on her mortgage, that Wells Fargo had acted without  
18 her knowledge or consent, and demanded that her account be taken out of  
19 forbearance.

20 149. Ms. Green received a letter from Wells Fargo dated July 1, 2020  
21 which memorialized this conversation. As the letter recounted, Wells Fargo placed  
22 Ms. Green's mortgage into forbearance though she "did not request this."

23 150. Wells Fargo admits in the letter that though Ms. Green called Wells  
24 Fargo to discuss suspending her late payments, Wells Fargo instead suspended all  
25 her mortgage payments.

26 151. Wells Fargo never informed Ms. Green, either on the June 26, 2020  
27 phone call or in the July 1, 2020 letter, that Wells Fargo failed to apply her June 12,  
28 2020 payment to her mortgage.

1        152.     On or about July 15, 2020, Ms. Green went to a Wells Fargo bank  
2 branch local to her in order to make another mortgage payment to Wells Fargo.

3        153.     However, when Ms. Green spoke with the Wells Fargo representative  
4 at the bank branch, she was told that the amount due on her mortgage was over  
5 \$3,500, that her prior June payment had not been applied to her mortgage or her  
6 escrow, and that her mortgage had been placed in forbearance.

7        154.     After Ms. Green's visit to the Wells Fargo branch, she immediately  
8 called Wells Fargo and spoke to a representative. The Wells Fargo representative  
9 confirmed that Ms. Green's mortgage payment had not been applied to her mortgage  
10 or her escrow because she had been placed in forbearance. The Wells Fargo  
11 representative told Ms. Green that her payment had been placed in an "unapplied  
12 fund" and that those payments would be reversed because they could not be applied  
13 to her mortgage or escrow while she was in forbearance.

14        155.     Wells Fargo placed Ms. Green's loan in forbearance without her  
15 consent, and incorrectly reported this to credit reporting agencies such that it  
16 appears on Ms. Green's credit report.

17        156.     Because Wells Fargo failed to properly apply her June 12, 2020  
18 payment, Wells Fargo reported to the Credit Reporting Agencies that Ms. Green was  
19 30 days late on her mortgage for the month of June 2020.

20        157.     Ms. Green did not request a forbearance of her mortgage loan  
21 payment obligations, did not contact Wells Fargo about a forbearance, and she did  
22 not—and does not—want a forbearance of her mortgage payment obligations.

23 **III. Facts Specific to Plaintiff Charles Johnson**

24        158.     Plaintiff Charles Johnson has a mortgage serviced by Wells Fargo.

25        159.     Wells Fargo collects payments and performs services for Mr. Johnson,  
26 the borrower.

27        160.     At the end of March 2020, Mr. Johnson called Wells Fargo and asked  
28 to be placed into the forbearance program which allowed for him to receive short-

1 term payment relief for his mortgage account.

2 161. Per his request, Mr. Johnson's forbearance period was to last three  
3 months, from April through June 2020.

4 162. Mr. Johnson received a letter from Wells Fargo dated April 6, 2020  
5 confirming that they had "suspended [his] obligation to make monthly mortgage  
6 payments for *three months*" and that Mr. Johnson needed to resume his "regular  
7 mortgage payment schedule beginning on *July 1, 2020*."

8 163. Wells Fargo sent Mr. Johnson a letter dated May 26, 2020 informing  
9 him that his account was due for two payments "for the month(s) of April 1, 2020  
10 through May 26, 2020."

11 164. Concerned by this correspondence, Mr. Johnson called Wells Fargo and  
12 spoke to a customer representative and asked specifically to be removed from the  
13 program when his three-month period ended.

14 165. He also asked about the process of resuming payments when his  
15 forbearance period ended on July 1, 2020.

16 166. Mr. Johnson did not ask that his forbearance period be extended; in  
17 fact, he requested the exact opposite.

18 167. Despite this conversation, Mr. Johnson received a letter from Wells  
19 Fargo dated June 17, 2020, asking Mr. Johnson if he wished to extend his period of  
20 forbearance for another three months.

21 168. Mr. Johnson did not request that the period of forbearance be extended,  
22 and since he already called Wells Fargo he expected that he would be taken out of  
23 the forbearance program.

24 169. However, in a letter from Wells Fargo dated July 8, 2020, Mr. Johnson  
25 was informed that Wells Fargo had yet again "suspended [his] mortgage payments  
26 for an additional three months." Mr. Johnson was told that he would not need to  
27 resume his mortgage payments until October 1, 2020.

28 170. At no point did Mr. Johnson provided any financial attestation or other

1 documentation as to his financial hardship or inability to make his mortgage  
2 payments to Wells Fargo.

3 171. Mr. Johnson made a \$1,446.80 mortgage payment on or about July 1,  
4 2020 which Wells Fargo accepted.

5 172. However, Wells Fargo failed to apply Mr. Johnson's July 1, 2020  
6 payment to his mortgage account.

7 173. Mr. Johnson made a \$1,446.80 mortgage payment on or about August  
8 1, 2020 which Wells Fargo accepted.

9 174. However, Wells Fargo failed to apply Mr. Johnson's August 1, 2020  
10 payment to his mortgage account, and decrease his principal and interest.

11 175. Mr. Johnson called Wells Fargo on or about July 16, 2020, told a  
12 customer service representative that he never requested that his forbearance period  
13 be extended, and requested to be removed from the forbearance program.

14 176. Wells Fargo did not provide Mr. Johnson with answers to his questions  
15 nor was he told that he was removed from the forbearance program.

16 177. Instead, Mr. Johnson was told to not make a payment on his mortgage  
17 and that he would be receiving further correspondence.

18 178. Mr. Johnson did not receive any further correspondence regarding the  
19 status of his mortgage account.

20 179. Mr. Johnson called Wells Fargo three additional times—on or about  
21 August 6th, 7th, and 11th—but Wells Fargo was not able to tell Mr. Johnson that he  
22 had been removed from the forbearance program.

23 180. Because Mr. Johnson's mortgage was placed in an extended  
24 forbearance program without his consent and without his knowledge, Wells Fargo  
25 incorrectly reported to the credit reporting agencies that his mortgage was in  
26 forbearance after July 1, 2020 and until October 1, 2020.

27 181. Mr. Johnson's credit score dropped by 13 points after July 1, 2020 as a  
28 result of Wells Fargo's incorrectly reporting to the credit reporting agencies that his



1 mortgage was in forbearance.

2 182. Wells Fargo placed Mr. Johnson's loan in forbearance without his  
3 consent, and incorrectly reported this to credit reporting agencies such that it  
4 appears on Mr. Johnson's credit report.

5 183. Wells Fargo also incorrectly reported to the credit reporting agencies  
6 that the total balance of Mr. Johnson's mortgage, failing to account the payments  
7 made for the months of April 2020 and May 2020.

8 184. Further, despite placing Mr. Johnson unwillingly into forbearance  
9 during these months and taking Mr. Johnson's payments, Wells Fargo reported to  
10 the credit reporting agencies that Mr. Johnson's mortgage balance increased from  
11 \$141,175 in April 2020 to \$143,288 in June 2020.

12 185. As such, Mr. Johnson suffered damages to his credit and reputation.

13 186. Further, Wells Fargo's incorrect placement of Mr. Johnson's account  
14 into forbearance without his request, failure to account for the payments he made,  
15 incorrect reporting to the credit bureaus, and to date failure to remedy the issues, are  
16 continuously causing Mr. Johnson mental anguish, embarrassment, and stress.

17 **CLASS ALLEGATIONS**

18 187. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and/or  
19 Fed. R. Civ. P. 23(b)(3) on behalf of themselves and a class of similarly situated  
20 individuals.

21 188. Plaintiffs seek to represent the following classes:

22 **Nationwide Class:** All persons with a mortgage loan  
23 serviced by Wells Fargo whose mortgage was placed into  
24 Wells Fargo's COVID-19 Mortgage Forbearance  
25 Program without their request or whose forbearance term  
26 was involuntarily extended without the request of the  
homeowner.

27 **Georgia Class:** All persons with Georgia addresses with  
28 a mortgage loan serviced by Wells Fargo whose  
mortgage was placed into Wells Fargo's COVID-19

1 Mortgage Forbearance Program without their request or  
2 whose forbearance term was involuntarily extended  
3 without the request of the homeowner.

4 **New York Class:** All persons with New York addresses  
5 with a mortgage loan serviced by Wells Fargo whose  
6 mortgage was placed into Wells Fargo COVID-19  
7 Mortgage Forbearance Program without their request or  
8 whose forbearance term was involuntarily extended  
9 without the request of the homeowner.

10 **California Class:** All persons with California addresses  
11 with a mortgage loan serviced by Wells Fargo whose  
12 mortgage was placed into Wells Fargo COVID-19  
13 Mortgage Forbearance Program without their request or  
14 whose forbearance term was involuntarily extended  
15 without the request of the homeowner.<sup>60</sup>

16 189. **Numerosity:** Members of the Nationwide, Georgia New York and  
17 California classes (collectively, the “Classes”) are so numerous that joinder of all  
18 members is impracticable. While the exact number of Class Members remains  
19 unknown at this time, upon information and belief, there are tens of thousands of  
20 putative Class Members throughout the United States who are generally ascertainable  
21 by appropriate discovery. A class action is the only feasible method of adjudicating  
22 the rights of the affected borrowers, and, absent allowance of a certification of a class  
23 action, a failure of justice will result.

24 190. **Commonality:** This action involves common questions of law and fact,  
25 which predominate over any questions affecting individual Class Members. These  
26 common legal and factual questions include, but are not limited to, the following:  
27 whether Wells Fargo engaged and engages in the practices complained of and  
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26 <sup>60</sup> Plaintiffs reserve the right to modify or to amend the definition of any  
27 proposed class and/or subclass before the Court determines whether certification is  
28 appropriate and as the parties engage in discovery.

1 whether such actions violate the law, as alleged. Specifically, the common question  
2 of law is whether Defendants' practice of unilaterally opting its mortgagor clients into  
3 its COVID-19 mortgage forbearance program so that they were unable to, among  
4 other things, obtain additional credit and/or to refinance their existing mortgage  
5 loans, violates the law.

6 191. Typicality: Plaintiffs' claims are typical of those of the other Class  
7 Members because, inter alia, all members of the Class were injured through the  
8 common misconduct described above and were subject to Wells Fargo's unfair and  
9 unlawful conduct. Plaintiffs are advancing the same claims and legal theories on  
10 behalf of themselves and all members of the Class.

11 192. Adequacy of Representation: Plaintiffs will fairly and adequately  
12 represent and protect the interests of the Class in that they have no disabling conflicts  
13 of interest that would be antagonistic to those of the other members of the Class.  
14 Plaintiffs have retained counsel experienced in complex consumer class action  
15 litigation, and Plaintiffs intend to prosecute this action vigorously.

16 193. Superiority: Class action treatment is superior to all other available  
17 methods for the fair and efficient adjudication of the controversy alleged herein; it  
18 will permit a large number of Class Members to prosecute their common claims in a  
19 single forum simultaneously, efficiently and without the unnecessary duplication of  
20 evidence, effort and expense that hundreds of individual actions would require. Class  
21 action treatment will permit the adjudication of relatively modest claims by certain  
22 Class Members, who could not individually afford to litigate a complex claim against  
23 large corporate defendants. Further, even for those Class Members who could afford  
24 to litigate such a claim, it would still be economically impractical.

25 194. The nature of this action and the nature of laws available to Plaintiffs  
26 and the Class make the use of the class action device a particularly efficient and  
27 appropriate procedure to afford relief to Plaintiffs and the Class Members for the  
28 wrongs alleged because Wells Fargo would necessarily gain an unconscionable

1 advantage since they would be able to exploit and overwhelm the limited resources of  
2 each individual Class Member with superior financial and legal resources; the costs  
3 of individual suits could unreasonably consume the amounts that would be recovered;  
4 proof of a common course of conduct to which Plaintiffs were exposed is  
5 representative of that experienced by the Class and will establish the right of each  
6 member of the Class to recover on the cause of action alleged; and individual actions  
7 would create a risk of inconsistent results and would be unnecessary and duplicative  
8 of this litigation.

9 195. The class action is superior to all other available methods for the fair and  
10 efficient adjudication of this controversy. Because of the number and nature of  
11 common questions of fact and law, multiple separate lawsuits would not serve the  
12 interest of judicial economy.

13 196. Plaintiffs do not anticipate any difficulty in the management of this  
14 litigation.

### 15 **COUNT I**

#### 16 **VIOLATION OF THE GEORGIA FAIR BUSINESS PRACTICES ACT**

#### 17 **O.C.G.A. §§ 10-1-390, ET SEQ.**

#### 18 **(On Behalf of Plaintiff Green & the Georgia Class)**

19 197. Plaintiffs re-allege and incorporate by reference the above-numbered  
20 paragraphs.

21 198. Wells Fargo committed unfair business acts and practices in violation of  
22 The Georgia Fair Business Practices Act, O.C.G.A §§ 10-1-390, *et seq.* (“GFBA”),  
23 by inaccurately reporting to credit reporting agencies that Plaintiff’s and the  
24 purported class members’ mortgages were “in forbearance” when Plaintiff and the  
25 putative Georgia class members never requested to be entered into Wells Fargo’s  
26 COVID-19 mortgage forbearance program.

27 199. Further, Wells Fargo committed an unfair practice by failing to disclose  
28 and provide Plaintiff Green and the Georgia class members with a voluntary option of

1 opting into the forbearance program should they chose to do so.

2 200. Wells Fargo failed to disclose the consequences of the forbearance  
3 option, and moreover, involuntarily enrolled Plaintiff Green and the Georgia Class  
4 Members into this program.

5 201. Wells Fargo's unconscionable, deceptive and/or unfair practices caused  
6 damages to Plaintiff Green and the Georgia Class Members who were unaware that  
7 their mortgages had been place "in forbearance" without their knowledge or consent.

8 202. Defendants' foregoing deceptive acts and practices, including their  
9 omissions, were likely to deceive, and did deceive, consumers acting reasonably  
10 under the circumstances.

11 203. As a direct and proximate result of Wells Fargo's unfair and deceptive  
12 practices, Plaintiffs and the Georgia Class Members suffered and will continue to  
13 suffer actual damages.

14 204. As a direct and proximate result of Defendants' deceptive acts and  
15 practices, including their omissions, Plaintiff Green and the Georgia Class Members  
16 have been damaged as alleged herein, and are entitled to recover actual damages to  
17 the extent permitted by law, including class action rules, in an amount to be proven at  
18 trial.

19 205. In addition, Plaintiff Green and the Georgia Class Members seek  
20 equitable and injunctive relief against Wells Fargo on terms that the Court considers  
21 reasonable, and reasonable attorneys' fees and costs.

22 **COUNT II**

23 **VIOLATION OF THE NEW YORK DECEPTIVE TRADE PRACTICES ACT**  
24 **N.Y. GEN. BUS. LAW § 340**  
25 **(On Behalf of Plaintiff Jacob & the New York Class)**

26 206. Plaintiffs re-allege and incorporate by reference the above-numbered  
27 paragraphs.

28 207. Wells Fargo committed unfair business acts and practices in violation of

1 The New York General Business Law § 349, *et seq.*, by inaccurately reporting to  
2 credit reporting agencies that Plaintiff Jacob's and the New York class members'  
3 mortgages were "in forbearance" when Plaintiff Jacob and the New York class  
4 members never requested to be entered into Wells Fargo's COVID-19 mortgage  
5 forbearance program.

6 208. Further, Wells Fargo committed unfair practice by failing to disclose and  
7 provide Plaintiff Jacob and the New York class members with a voluntary option of  
8 opting into the forbearance program should Plaintiff and the New York class  
9 members chose to do so.

10 209. Wells Fargo failed to disclose the consequences of the forbearance  
11 option, and moreover, involuntarily opted Plaintiff Jacob and the New York class  
12 members class into this program.

13 210. Wells Fargo's practices were consumer oriented because they essentially  
14 placed unwilling consumers, who wished to continue making payments on their loans  
15 and preserve their credit history, into forbearance, without even notifying such  
16 consumers or obtaining their permission.

17 211. Wells Fargo's unconscionable, deceptive and/or unfair practices caused  
18 damages to Plaintiff Jacob and the New York Class Members who were unaware that  
19 their mortgages had been place "in forbearance" without their knowledge or consent.

20 212. Defendants' foregoing deceptive acts and practices, including their  
21 omissions, were likely to deceive, and did deceive, consumers acting reasonably  
22 under the circumstances.

23 213. As a direct and proximate result of Wells Fargo's unfair and deceptive  
24 practices, Plaintiff Jacob and the New York class members suffered and will continue  
25 to suffer actual damages.

26 214. Defendants' practice was misleading in a material respect because it  
27 caused Plaintiff and the New York Class members damages.

28 215. Plaintiff Jacob and the New York Class members did not wish to opt in

1 to forbearance, and yet, that was not an option for them.

2 216. As a direct and proximate result of Defendants' deceptive acts and  
3 practices, including their omissions, Plaintiff Jacob and the New York Class  
4 Members have been damaged as alleged herein, and are entitled to recover actual  
5 damages to the extent permitted by law, including class action rules, in an amount to  
6 be proven at trial.

7 217. In addition, Plaintiff Jacob and the New York Class Members seek  
8 equitable and injunctive relief against Wells Fargo on terms that the Court considers  
9 reasonable and appropriate, as well as reasonable attorneys' fees and costs.

10 **COUNT III**

11 **VIOLATION OF THE CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT**  
12 **CAL. CIV. CODE § 1785.1, *ET SEQ.* (CCCRAA)**  
13 **(On Behalf of Plaintiff Johnson and the California Class)**

14 218. Plaintiffs re-allege and incorporate by reference the above-numbered  
15 paragraphs

16 219. Mr. Johnson on behalf of himself and the California Class brings the  
17 action under the California Consumer Credit Reporting Agencies Act, Cal. Civ.  
18 Code. §§ 1785, *et seq.* ("CCCRAA").

19 220. Mr. Johnson (and the members of the California Class) is/are a consumer  
20 as that term is defined by Cal. Civ. Code § 1785.3(b).

21 221. In the regular course of its business operations, Wells Fargo routinely  
22 furnishes information to credit reporting agencies pertaining to transactions between  
23 Wells Fargo and its consumers, so as to provide information as to a consumer's credit  
24 worthiness, credit standing and credit capacity.

25 222. This action concerns Wells Fargo's furnishing of false derogatory  
26 information on Mr. Johnson's consumer credit report, as defined by Cal. Civ. Code §  
27 1785.3(c).

28 223. Specifically, Wells Fargo furnished the information to the credit



1 reporting agencies (as defined by §m1788.3(d)) that Mr. Johnson was in forbearance,  
2 while Mr. Johnson did not request to be placed in the forbearance, requested to be  
3 excluded from the forbearance program and never request Wells Fargo to extend the  
4 term of forbearance.

5 224. Wells Fargo's reported information is also misleading because it implies  
6 that Mr. Johnson requested to be in the forbearance when the opposite is true.

7 225. Further, Wells Fargo failed to account for a number of payments Mr.  
8 Johnson made and decrease the principle balance still owed to Wells Fargo, falsely  
9 reporting a larger amount due to Wells Fargo on Mr. Johnson's credit report.

10 226. Wells Fargo, its agents, subsidiaries, and partners are "persons" as  
11 defined under the CCCRAA § 1788.3(j).

12 227. Wells Fargo furnished and continues to furnish information it knows is  
13 false, incomplete, misleading, and inaccurate in violation of Cal. Civ. 1785.25(a).

14 228. The foregoing acts and omissions constitute numerous and multiple  
15 violations of the CCCRAA.

16 229. As evidenced above, Wells Fargo's violation of the CCRAA is willful.

17 230. As a result of each and every violation of the CCCRAA, Mr. Johnson  
18 and California Class members are entitled to damages; attorneys' fees and costs  
19 pursuant to Cal. Civ. Code § 1785.31(a)(1) and, Cal. Civ. Code § 1785.31(d);  
20 punitive damages of \$100.00 up to \$5,000.00 per willful violation of Cal. Civ. Code §  
21 1785.25(a), pursuant to Cal. Civ. Code § 1785.31(a)(2)(B); and equitable and  
22 injunctive relief pursuant to Cal. Civ. Code § 1785.31(b).

23  
24  
25 **COUNT IV**

26 **VIOLATION OF THE CALIFORNIA ROSENTHAL ACT**  
27 **CAL. CIV. CODE § 1788, *ET SEQ.* (RFDCPA)**  
28 **(On Behalf of Plaintiff Johnson and the California Class)**

1           231. Plaintiffs re-allege and incorporate by reference the above-numbered  
2 paragraphs.

3           232. Wells Fargo is a “debt collector” as defined under the Cal. Civ. Code §  
4 1788.2(b) because it collects, in the ordinary course of business, on behalf of itself,  
5 numerous debts and payments from consumers.

6           233. This matter involves money, property or their equivalent, due or owing  
7 or alleged to be due or owing from a natural person by reason of a consumer credit  
8 transaction. As such, this action arises out of a “consumer debt” and “consumer  
9 credit” as those terms are defined by Cal. Civ. Code § 1788.2(e)-(f);

10           234. As discussed above, Mr. Johnson entered in a consumer credit  
11 transaction, involving an extension of credit pertaining to a certain Wells Fargo loan.

12           235. Wells Fargo, without authority or consent of Mr. Johnson or other  
13 consumers, placed Mr. Johnson and thousands of California consumers into  
14 forbearance.

15           236. Further, while Mr. Johnson never asked to be in forbearance, and  
16 expressly asked to be removed from forbearance program, Wells Fargo continued to  
17 keep Mr. Johnson in this program unwillingly, while collecting monthly mortgage  
18 payments and failing to apply these payments towards the principal balance and  
19 interest of the loan,

20           237. Wells Fargo made representations that it will not place individuals into  
21 forbearance or extend the forbearance period beyond consumer requests, and yet, it  
22 did so despite having no authority to do so under the law or agreement of consumers.

23           238. As such, Wells Fargo violated 15 U.S.C. § 1692e, 1692e(5), 1692e(10),  
24 1692f (all of which are incorporated in Cal. Civ. Code 1788.17) for making  
25 misrepresentations regarding forbearance, placing unwilling consumers into  
26 forbearance, and extending consumers’ forbearance periods without their requests or  
27 authorization.

28           239. Wells Fargo also falsely *communicated* to the credit bureaus that Mr.

1 Johnson and California class are in forbearance, in violation of 15 U.S.C. § 1692e(8),  
2 also incorporated in Cal. Civ. Code § 1788.17. Wells Fargo's false communications  
3 with third parties regarding Mr. Johnson's account, and the amount still due and  
4 owing, were also false under 1692e, 1692e(2), 1692e(5), and 1692e(10) (all of which  
5 are incorporated into the Rosenthal Act under Cal. Civ. Code 1788.17).

6 240. Wells Fargo continued to collect the monthly mortgage fees, despite  
7 placing Mr. Johnson in forbearance and failing to apply these funds towards his  
8 mortgage account.

9 241. As such, by failing to decrease the principal balance and interest after  
10 receiving payments from Mr. Johnson, Wells Fargo collected the amount not owed in  
11 violation of 15 U.S.C. §§ 1692f, and 1692f(1) (incorporated through Cal. Civ. Code  
12 1788.17).

13 242. Mr. Johnson seeks statutory damages, attorneys' fees and costs, pursuant  
14 to Cal. Civ. Code § 1788.30.

15  
16 **COUNT V**

17 **UNJUST ENRICHMENT**  
18 **(On Behalf of Plaintiffs and the Nationwide Class)**

19 243. Plaintiffs re-allege and incorporate by reference the above-numbered  
20 paragraphs.

21 244. Plaintiffs and members of the Nationwide Class have conferred a benefit  
22 upon Wells Fargo in the following ways:

- 23 • Wells Fargo collected mortgage payments from Plaintiffs and the  
24 Nationwide Class that Wells Fargo did not apply to mortgage  
25 balances thus earning "float" income on unapplied funds, which  
26 accrues for the time between when consumers pay and when funds  
27 are remitted to the loans' owners.
- 28 • By placing Plaintiffs and the Nationwide Class into forbearance

1 without their consent, Wells Fargo prevented Plaintiffs and the  
2 Nationwide Class from being able to re-finance their mortgage  
3 loans with other mortgage lenders during a time of historically low  
4 interest rates, thus capturing the mortgage loans of Plaintiffs and  
5 members of the Nationwide Class, locking them in at higher interest  
6 rates while continuing to earn profit from interest payments and  
7 other fees (and significantly impeding their chances of being able to  
8 refinance for the foreseeable future).

- 9 • Wells Fargo extended the lengths of the mortgages of Plaintiffs and  
10 members of the Nationwide Class by at least 3 months, and in many  
11 cases much longer, thus accruing the benefits of continued servicing  
12 of those loans, including collecting interest and fees, collecting a  
13 per-loan servicing fee, and publicly reporting to investors that they  
14 continued to service those mortgages.
- 15 • Wells Fargo earned additional fees for, among other things, filing  
16 incentive payments after loans are placed in forbearance.
- 17 • Taking advantage of new rules made pursuant to the CARES Act,  
18 Wells Fargo no longer forwards Fannie Mae borrowers' mortgage  
19 payments after four months if the borrowers have stopped paying  
20 because they are in forbearance programs, allowing Wells Fargo to  
21 continue holding those funds.

22 245. Wells Fargo's practice of placing Plaintiffs and members of the  
23 Nationwide Class into forbearance without their consent resulted in Plaintiffs and  
24 members of the Nationwide Class being denied the benefit of having their payments  
25 applied to their mortgage accounts and re-financing their loans at a lower interest  
26 rate.

27 246. Wells Fargo appreciates and/or has knowledge of the benefits conferred  
28 upon it by Plaintiffs and the Nationwide Class.

247. Under principles of equity and good conscience, Wells Fargo should not be permitted to retain the monies they unjustly received as a result of its wrongful conduct described herein.

248. Accordingly, Plaintiffs, on behalf of themselves and the other members of the Nationwide Class, seek restitution and disgorgement of all amounts by which Wells Fargo has been unjustly enriched.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs pray for relief and judgment against Defendants and each of them, as follows:

A. Certifying this action as a class action;

B. Designating Plaintiffs as class representatives under Federal Rule of Civil Procedure 23;

C. Designating Plaintiffs' counsel as class counsel under Federal Rule of Civil Procedure 23;

#### D. Awarding Costs of suit;

E. Awarding damages, including compensatory, exemplary, and statutory damages, to Plaintiffs and the Class in an amount to be determined at trial;

F. Awarding Statutory damages to be awarded to each class member of the New York Class under N.Y. Gen. Bus. Law. § 340, up to \$2,000 (to each person);

G. Awarding Attorneys' fees under N.Y. Gen. Bus. Law § 340 *et al* and O.C.G.A. §§ 10-1-399(d);

H. Awarding Statutory, exemplary, and/or treble damages and attorneys' fees and costs under O.C.G.A. § 10-1-399(a) *et seq* to the attorneys and Georgia Class,

I. Awarding Statutory damages pursuant to Cal. Civ. Code § 1785.31(a)(2)(B) to California Class;

1 J. Awarding Attorney's fees pursuant to Cal. Civ. Code §  
2 1785.31(a)(1);

3 K. Equitable and injunctive relief pursuant to Cal. Civ. Code §  
4 1785.31(b);

5 L. Awarding statutory damages pursuant to Cal. Civ. Code §  
6 1788.30, attorneys' fees and costs, to California Class;

7 M. Awarding punitive damages, to the extent permitted by law, in an  
8 amount to be determined at trial;

9 N. Awarding Plaintiffs incentive awards;

10 O. Awarding Plaintiffs and the members of the Class any pre-  
11 judgment and post-judgment interest as may be allowed under the law and

12 P. Imposing an injunction preventing Defendants from engaging in  
13 the conduct described herein and requiring Defendants to restore the Plaintiffs'  
14 and class members accounts to status quo ante, as though the account was  
15 never treated as being in forbearance status; and

16 Q. Awarding such other and further relief as the Court may deem just  
17 and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs demand a trial by jury of any and all triable issues.

20  
21 Date: August 17, 2020

**KAZEROUNI LAW GROUP, APC**

22 By: s/ Abbas Kazerounian

23 Abbas Kazerounian, Esq.

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